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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re O.V. et al., Persons Coming Under the
Juvenile Court Law.

B207603
(Los Angeles County
Super. Ct. No. CK52955)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.V.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Valerie Lynn Skeba, Juvenile Court Referee. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant
and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens and Frank J.
DaVanzo, Deputy County Counsel, for Plaintiff and Respondent.

D.V. ("Mother") appeals from the order terminating her parental rights to her sons, O. and B. On appeal, Mother maintains that there was insufficient evidence that the children were adoptable, and that her relationship with them met the exception provided by section 366.26, subdivision (c)(1)(b)(i) of the Welfare and Institutions Code.¹ Finding no error, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Mother's two children, O. and B., were ordered detained by the juvenile court on July 17, 2003, when they were 34 and 11 months old, respectively.² The court took jurisdiction of the minors and ordered reunification services for Mother. The children were placed in a foster home. Mother regularly visited the children.

Approximately 21 months later, on April 8, 2005, the court terminated reunification services and set a section 366.26 hearing. Mother was permitted to continue visiting the children.

The section 366.26 social worker's report dated August 5, 2005, stated that the children had been replaced to a new foster home because the previous foster mother had returned to Mexico due to health concerns. The social worker believed that the chances of adoption for the two children were very high, but no adoptive parent had yet been identified.

On December 2, 2005, the court stated that during an off-the-record conference, DCFS had agreed to return the children to Mother's care. Mother gave birth to a third child in December 2005, and stated that she was ready, willing and able to provide a home to all of her children. At the court's suggestion, Mother filed a section 388 petition. However, due to Mother's inadequate housing and reports that the children's maternal aunt and uncle had hit them, Mother withdrew her section 388 petition on January 26,

¹ Further statutory references are to this code.

² Mother herself was just 15 years old and a dependent of the juvenile court when O. was born.

2006. The court then reset the section 366.26 hearing. Mother continued to enjoy unmonitored visits.

According to the April 7, 2006 status review report, the social worker believed that the children were suitable candidates for adoption and that they should remain together. However, the Placement Recruitment Unit had abandoned the effort to place the children in an adoptive home because they continued to have weekend overnight visits with Mother.

In a February 10, 2007 report, the DCFS social worker believed that it was very likely that both boys would be adopted, and that they should be adopted together. Again, no prospective adoptive parents had yet been identified.

A June 5, 2007 DCFS report stated that the matter had been refereed to the Placement and Recruitment Unit, that a family had been identified, but then decided against adopting the boys. The DCFS social worker continued to believe that they were highly adoptable because they did not have any physical concerns or mental health issues.

In a section 366.26 report dated October 2, 2007, the social worker indicated that no adoptive family had yet been identified. The report also indicated that Mother had missed the initial three conjoint therapy sessions which had been ordered in June, and that O. was sad, angry and disappointed with his mother for that reason.

On November 19, 2007, DCFS filed a section 388 petition that sought to terminate Mother's conjoint therapy and her visits with the children, because a prospective adoptive family had been identified. Mother also filed a section 388 petition, seeking return of the boys to her custody or, in the alternative, liberalized visitation, reunification services and a bonding study.

On January 29, 2008, the court denied Mother's section 388 petition and granted DCFS's petition. The court set a section 366.26 hearing for April 29, 2008.

As reported in DCFS's April 29, 2008 report, both boys had been evaluated by the Regional Center for developmental delays, but had been denied services because it was determined that they did not have significant developmental delays. An adoption assessment indicated that both children had attention difficulties and an adjustment

disorder. However, after spending time in his new home, B.'s school performance improved dramatically. His teachers, school administrators and foster parents together decided to have him repeat his grade in school. As a result, B. was reaching his developmental milestones, speaking clearly, expressing his feelings and needs, enjoying school and socializing well.

The April 29, 2008 DCFS report also recited that "The adoptive applicants have expressed an interest in adopting the children The adoptive applicants are committed to providing O[.] and B[.] with a permanent and stable home." In addition, a home study assessment on the adoptive parents had been approved.

Mother continued to visit two times a month for two hours. However, on April 17, 2008, the children told the DCFS social worker that they were no longer interested in having visits with Mother. The older boy told the social worker that his mother lied too much and missed visits and conjoint therapy sessions. He said that he would rather see his mother two weeks out of the year so that he could develop a relationship with his younger brother. At the conclusion of visits, he wanted to return to the home of his adoptive parents.

On April 29, 2008, Mother was not present in court and, when her counsel asked for more time because Mother was often late to arrive in court, the court indicated that it was past 10:00 a.m., and that the proceedings could not be delayed for a party who was habitually late. The court further found, after hearing from Mother's counsel, that the children needed stability and permanence, which could only be provided by a plan of adoption. "Mother has not acted in a parental role for these children in a long time." The adoptive parents were present in the courtroom, and the court indicated that while Mother's future contact was an issue for them to control, the children indicated that they wished to have such contact with their mother. The court found by clear and convincing evidence that the children were adoptable. The court also remarked that, while the minors had only resided with the adoptive parents for six months, they were doing well in their adoptive home. The court terminated parental rights over the children. Mother timely appealed that ruling.

CONTENTIONS

On appeal, Mother maintains that the boys were not adoptable, claiming that "[t]hey underwent numerous psychological evaluations, educational assessments, and medical tests. They underwent a long period of psychological counseling. B[.] was on daily medication for his ADHD condition, his asthma, and his eyesight problems, and O[.] had attention difficulties and an adjustment disorder with mixed anxiety and depressed mood." Mother also contends that the trial court erred in failing to find applicable the visitation exception to termination of parental rights set forth in section 366.26, subdivision (c). We consider each contention in turn.

DISCUSSION

1. *Adoptability finding*

"We review the factual basis of an adoptability finding by determining whether the record contains substantial evidence from which a reasonable trier of fact could make the finding made by the trial court by clear and convincing evidence." (*In re Christiano S.* (1997) 58 Cal.App.4th 1424, 1431.) In so doing, we draw all inferences in support of the finding and view the record in the light most favorable to the juvenile court. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.) Applying this standard, we conclude that the trial court's findings are supported by substantial evidence.

Mother argues that O. and B. were "special needs" children with substantial emotional and behavioral problems, making it unlikely that either boy would be adopted "*but for* the existence of the only available prospective adoptive family which had been recently identified." Moreover, Mother contends that "the likelihood that adoption with this family would be finalized was small." Mother cites the following as evidence of this conclusion: "At the time of the section 366.26 hearing, the children had resided with the family for only a few months, the prospective adoptive parents had not demonstrated that they understood, and were capable of handling, the children's special needs, or that they had ever cared for children, whether or not special needs, and the prospective adoptive parents had never made a final commitment to adopt the children."

By the date Mother's parental rights were terminated, neither of the boys had any developmental delays that made them clients of the Regional Center. B.'s behavior at school had significantly improved, and his academic achievement had advanced so that he no longer required an Individualized Education Program. He had become more articulate and was able to speak clearly. This information was provided by B.'s school psychologist, who found that the adoptive father's involvement with and commitment to B. was responsible for the child's improvement as well as his emotional well-being.

While the children had been in individual and conjoint therapy for many years, it appeared that one cause of O.'s depression was his frustration with Mother in not attending the conjoint therapy that had been ordered for the purpose of developing an appropriate attachment. O. stated that he felt sad, and he appeared to lose confidence in Mother's commitment to him. The therapist wrote that Mother's ". . . inconsistent attendance has disrupted the attempt in therapy to facilitate the attachment relationship between the mother and her children by building trust between them. . . ." The children's therapist apparently believed that the children had never formed the basic trusting attachment relationship that a child normally develops toward his or her parent, and Mother's inconsistent attendance had upset the therapist's hoped-for plan to develop such an attachment.

In sum, Mother's argument flows from her assumption that the boys were special needs children, and were therefore unadoptable. However, this assumption was unwarranted. Given a loving, stable home environment, the children's emotional, physical and intellectual behavior had substantially improved and was developmentally appropriate.

"Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt [the child] generally indicates the minor is likely to be adopted within a reasonable time either by

the prospective adoptive parent *or by some other family.*" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650, emphasis in original.)

At the time of the section 366.26 hearing, the minors had resided for a period of months with prospective adoptive parents committed to the adoption process. The April 2008 DCFS report stated: "The adoptive applicants are prepared to adopt and are excited about the opportunity. . . . The adoptive applicants are committed to provide the children with a permanent and loving home." Moreover, the adoptive parents' commitment to the children was attested to by the school psychologist, who wrote: "Mr. [S.] has taken a very active role in the academic and the emotional well being of [B.]. B[.]'s placement with Mr. [S.] and the stability the placement has provided has helped this child tremendously. We could only wish for more parents, regular and foster that are willing to take such an active role in their child's development."

In short, the trial court's finding that the minors were adoptable is fully supported by the record.

2. *Relationship exception*

Section 366.26, subdivision (c) provides that parental rights should not be terminated if "[t]he court finds a compelling reason for determining that termination would be detrimental to the child due to [the fact that the] parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subdivision (c)(1)(b)(i).) Mother contends that the trial court erred in finding that this exception did not apply in this case. Again, we review the order to determine "whether there is substantial evidence to support the trial court's ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) If the court's ruling is supported by substantial evidence, the reviewing court must affirm the court's rejection of the exceptions to termination of parental rights under section 366.26, subdivision (c). (*Autumn H.* [(1994)] 27 Cal.App.4th 567, 576.)" (*In re S.B.* (2008) 164 Cal.App.4th 289, 297-298.)

"When contesting termination of parental rights under the statutory exception that the parent has maintained regular visitation with the child and the child will benefit from continuing the relationship, the parent has the burden of showing either that (1) continuation of the parent-child relationship will promote the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents (*In re Jamie R.* (2001) 90 Cal.App.4th 766, 773) or (2) termination of the parental relationship would be detrimental to the child. (*In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252.) Put another way, DCFS is *not* required to produce evidence demonstrating that a minor would *not* benefit from continued parental contact." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

Here, Mother offered no evidence in support of the relationship exception, and Mother's counsel made little or no showing regarding the exception except to point out that O. wanted to limit his contact with his mother to two weeks each year so that he could see his youngest brother, who remained in Mother's care. At best, Mother relied on her regular visits during the prolonged dependency period to argue for the applicability of the section 366.26, subdivision (c) exception to termination of her rights. However, consistent visitation alone has never been deemed sufficient evidence to overcome the strong Legislative preference of adoption for children who cannot be reunified with their parents within 18 months of their detention. (See, e.g., *In re Autumn H.*, *supra*, 27 Cal.App.4th 567, 573-574; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349.) The trial court found that Mother had not acted in a parental role towards these children and that the benefits of adoption in a stable, permanent home outweighed the benefit of continuing their relationship with their mother. The record supports these factual findings: When the children were young, Mother, herself a minor, snuck out at night from Booth Memorial Center to drink alcohol and smoke with her friends; she inappropriately disciplined her young children, and left them in the care of relatives who allegedly physically abused them; she regularly returned them from visits dirty and unkempt; and she was unable to provide the children with structured discipline on their visits. By contrast, the adoptive home in which the boys

resided provided the children with structure and stability, resulting in swift and substantial improvement in their behavior, academic performance and well-being.

In sum, viewing the evidence in the light most favorable to the prevailing party, we find substantial evidence to support the trial court's findings that the children would derive no substantial benefit from a continuing relationship with Mother, and so affirm.

DISPOSITION

The order terminating parental rights is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.